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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

JUN 24 1999

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)

The Establishment of Policies and Service Rules)
for the Mobile Satellite Service in the 2 GHz Band)

ET Docket No. 99-81
RM-9328

To: The Commission

COMMENTS

BT NORTH AMERICA INC.

Cheryl Lynn Schneider
Chief Regulatory Counsel, Americas
BT North America Inc.

Joan M. Griffin
Kelley Drye & Warren, L.L.P.

**HUGHES TELECOMMUNICATIONS
AND SPACE COMPANY**

Jennifer A. Smolker
Vice President & Assistant General
Counsel
Hughes Electronics (on behalf of
Hughes Telecommunications and
Space Company)

TELECOMUNICACIONES DE MEXICO

Carlos Mier y Teran
Director General
Telecomunicaciones de Mexico

TRW INC.

Norman P. Leventhal
Walter P. Jacob
Leventhal, Senter & Lerman
P.L.L.C.

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EXHIBIT A

EXHIBIT B

SUMMARY

The ICO USA Service Group ("IUSG") urges the Commission to bring the licensing of 2 GHz MSS systems to a swift and appropriate conclusion by adopting the Commission's Negotiated Entry Approach to system licensing, as modified in the IUSG Negotiated Entry Approach ("INEA") described in the instant pleading. While each of the licensing proposals suggested by the Commission in its NPRM in this proceeding would respond to at least some of the challenges of establishing a viable and competitive 2 GHz MSS, only the INEA can address all of those challenges in a manner that assures all 2 GHz MSS applicants access to the spectrum they need while permitting the earliest possible commencement of service to the user public.

In establishing the INEA, the Commission should generally use the Big LEO rules as a template for service rules for the 2 GHz MSS. In keeping with this approach, the Commission should adopt eligibility standards for system proponents based on those previously employed for Big LEO systems. To the extent that mutual exclusivity does not exist among system applicants, the Commission can forego the use of a financial qualification standard and should employ strict construction milestones -- measured from the date of issuance of a conditional license -- to prevent spectrum warehousing.

The IUSG supports the licensing of qualified 2 GHz NGSO MSS applicants conditionally across the entire 2 GHz MSS bands. 2 GHz GSO MSS applicants should be conditionally licensed across a portion of the 2 GHz MSS spectrum allocated for regional services -- specifically, the 2015-2025 MHz and 2165-2175 MHz bands. In addition, all 2 GHz MSS system operators should be required to construct their systems so as to be capable of operating anywhere within a 70 percent

portion of the bands in which they are conditionally authorized to operate.

The Commission should permit early 2 GHz MSS market entrants that satisfy all construction milestones to provide service anywhere in the 2 GHz MSS bands available to their systems, subject to negotiation and coordination with later arrivals if and when such later arrivals have met the same milestones. A system proponent should be found eligible to coordinate its system with other 2 GHz MSS systems and to clear and obtain access to 2 GHz MSS spectrum once it has (1) filed a request for ITU frequency coordination; (2) met the developmental milestones proposed in the NPRM and herein; and (3) demonstrated that it has entered into an unconditional launch contract and is within one year of launch of its first satellite.

To safeguard the interest of later market entrants in obtaining access to 2 GHz MSS spectrum on an equitable basis, the Commission should condition the licenses of all 2 GHz MSS systems to forbid claims of priority in coordination with subsequent entrants in the Commission's first 2 GHz MSS processing round. It has been suggested that the Commission may also wish to provide, should coordination negotiations between earlier and later entrants not result in an agreement within 120 days after they commence, that a newly entering MSS licensee will be entitled (with certain limitations) to use on an interim basis up to a total of 2.5 MHz or some specified percentage of spectrum then currently cleared and available for MSS use, whichever is larger. In addition, the Commission should be available to guarantee that all domestic intersystem coordination is conducted in good faith, to resolve any coordination disputes, and to ensure that all systems receive at least the minimum amount of spectrum to which they are entitled.

The INEA contemplates that the Commission will provide for the gradual relocation of 2 GHz incumbent licensees as necessary, in accordance with the plan described by the IUSG in its

filings in the Commission's proceeding addressing 2 GHz relocation matters. That plan minimizes both disruption to current 2 GHz incumbent licensee operations and relocation costs to be paid by 2 GHz MSS system operators. It has also been suggested that the Commission employ a cost equalization mechanism that averages relocation costs per MHz of spectrum on a rolling, going-forward basis (separately for 2 GHz MSS uplink and downlink bands) so as to ensure that later first-round entrants are not placed at a disadvantage by being relegated to bands that may be more expensive to clear of incumbent licensees than were the bands cleared by earlier entrants. The IUSG recommends that each MSS licensee that incurs relocation costs be required to file on a confidential basis all relevant information regarding its expenditures with the Commission or a designated information clearinghouse.

The IUSG urges the Commission not to initiate a second processing round for MSS systems in the 2 GHz bands until such time as all current applicants have either met or failed to meet their developmental milestones. Were the Commission to re-assign 2 GHz MSS spectrum to second-round applicants before it knew with certainty how many first-round systems will operate in the 2 GHz bands and what their spectrum requirements will be, it would jeopardize the viability of systems that are operational or in the process of development for the sake of systems that are still purely hypothetical.

The Commission also should not divide the 2 GHz MSS bands according to the anticipated use by system applicants of CDMA or TDMA modulation schemes. Such an approach would force many operators to commit to a modulation scheme years before they can know which scheme will serve their interests best, and will surely result in later system modifications that require the

Commission to re-design and re-coordinate its band plan at great effort and expense. The Commission should, however, divide the 2 GHz MSS band into frequencies designated for NGSO and GSO system use, as GSO system operations are inherently regional and should properly be restricted to bands designated for regional service.

While the international coordination of 2 GHz MSS systems will prove challenging under any licensing plan that has been suggested for the service to date, the IUSG believes that the INEA offers the best hope for a satisfactory outcome of that process. The INEA will enable the Commission to coordinate each MSS system with the benefit of the actual frequencies in which that system will operate domestically -- rather than hypothetical spectrum assignments -- and will thus minimize the possibility that systems would have to be re-coordinated at a later date.

The Commission should adopt the INEA in lieu of either its Flexible Band or Traditional Band Arrangements because, among other things, both of those latter plans would put the Commission in the position of choosing in advance the bands in which applicants are to operate rather than permitting system proponents to make their own decisions based on market realities at the time the applicants wish to commence service. By permitting applicants to select the bands for which they coordinate, the INEA will result in optimal service to the public and minimize the need for the Commission to revisit spectrum assignments once they are made.

The Commission should not, under any circumstances, employ auctions to license 2 GHz MSS systems. It appears that such use of auctions would be unlawful, as the Commission has tentatively concluded that no mutual exclusivity among system applicants exists. In any event, the use of spectrum auctions to license MSS systems would encourage foreign governments to do the same, thus raising the cost of providing global MSS to the point that it becomes untenable.

The Commission should adopt and strictly enforce the developmental milestones proposed in the NPRM, as well as separate, strictly enforced milestones for the construction of in-orbit spares and ground segment facilities. Information filed by 2 GHz MSS system licensees regarding milestone compliance should be made fully available for public review.

The Commission should establish 12-year license terms for 2 GHz MSS systems commencing with the start of satellite operations, and for mobile Earth stations as well. The Commission should also adopt a renewal expectancy for 2 GHz MSS systems, given, *inter alia*, the large costs that system operators are asked to bear to relocate 2 GHz incumbent licensees.

The Commission should not require 2 GHz MSS system operators to employ enhanced 9-1-1 capabilities in their satellite systems, or impose new technical requirements for 2 GHz MSS terminals. Such requirements at this juncture would be unduly expensive, and would place a disproportionate burden on systems that are closest to implementation.

Worthy as is the goal of providing 2 GHz MSS to currently underserved communities, the Commission should not attempt to create artificial incentives for satellite system operators to provide such service. Such incentives will only be abused by system operators, who will not be serving end users directly in any case. It is retail service providers that will offer 2 GHz MSS directly to customers, and those providers will be required as common carriers to offer service on a nondiscriminatory basis.

Finally, the Commission need not adopt an anti-trafficking rule regarding 2 GHz MSS licenses, given the unlikelihood that any system proponent is motivated to go to the effort of obtaining such a license for purely speculative reasons. If such a rule is adopted, the Commission certainly should not apply it to non-U.S.-licensed satellite systems.